

**BEFORE THE  
GOVERNING BOARD  
OF THE ROSEMEAD SCHOOL DISTRICT  
STATE OF CALIFORNIA**

In the Matter of the Non-reemployment of  
Eight Full Time Equivalent Certificated  
Employees,

Summer Agnes, et al.,

Respondents.

OAH Case No. 2012021108

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 18, 2012, at Rosemead, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Guy A. Bryant, Bryant & Brown. All Respondents, identified further below, were represented by Richard J. Schwab, Trygstaad, Schwab & Trygstaad.

All Respondents were present, excepting Conner Ryan and Terri Totten.

Oral and documentary evidence was received, argument was heard, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order, as follows.

**FACTUAL FINDINGS**

1. Complainant Amy Enomoto-Perez, Ed.D., filed and maintained the Accusation<sup>1</sup> in the above-captioned matter while acting in her official capacity as Superintendent of the Rosemead School District (District).

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<sup>1</sup> The term “accusation” refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503; that statutory scheme governs the hearing procedures in this case. The Respondents are not “accused” in the everyday sense of that word; they have done nothing wrong, and all appear to be dedicated professionals. It might be said that they are simply accused of not having enough seniority or other qualifications to retain their positions with the District in the face of a resolution to reduce positions.

2. The following persons are certificated employees of the District and are the Respondents in this case: Summer Agnes, Albert Aguilar, Jing Cai, Respect Ly, Deborah Pettus, Bernadette Polich, Conner Ryan, and Terri Totten.

3. (A) On March 1, 2012, the Governing Board of the District (Board) adopted Personnel Resolution No. 11-12#03 (hereafter Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2012-2013 school year. Specifically, the resolution requires the reductions of eight “FTE”—Full Time Equivalents—by reducing various types of services in the elementary and middle schools. This decision was based on financial concerns as the District faces a budget shortfall.

(B) The FTEs that the Board determined to reduce are described in the Reduction Resolution, as follows:

One Fourth and Two Sixth Grade Teachers	3
Two Middle School Science Teachers	2
Two Middle School Social Science Teachers	2
One CORE Social Studies/Language Arts Teacher	1
Total FTE to be reduced:	8

4. As part of the Reduction Resolution, the Board adopted “tie breaking” criteria for determining seniority in cases where two or more certificated employees share the same seniority date. The tie-breaking criteria, found in Exhibit A to the Reduction Resolution, are based solely on the needs of the District and its students.

5. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.<sup>2</sup>

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given the uncertainty regarding the state budget and the District’s financial resources.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

8. On or about March 13, 2012, each Respondent was given written notice that pursuant to sections 44949 and 44955, their services would not be required in the 2012-2013 school year (hereafter the preliminary notices). Thereafter, Respondents requested a hearing. All jurisdictional requirements have been met.

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<sup>2</sup> All further statutory references are to the Education Code.

9. To implement the reduction in force, the District created a seniority list. That seniority list took into account a number of factors, including first date of paid service and the information used in the tie-breaking criteria, such as credential types and post-graduate degrees. At the hearing, it was stipulated that the dates of hire for two Respondents should be changed, as follows: for Respondent Summer Agnes, her date of hire was changed from 1/5/04 to 11/07/03, and for Respondent Jing Cai, her date of hire was changed from 10/6/06 to 9/7/06.

10. In determining who would receive final lay off notices, the District staff evaluated whether any senior teacher could displace or “bump” a junior teacher. In various cases such senior teachers did displace junior teachers.

11. Pursuant to “skip” criteria approved by the Board in the Reduction Resolution, some junior employees were retained by the District. Such teachers had the credentials and special training to bring them within the skip criteria, and they were properly exempted from lay off.

12. In the course of the hearing, it was disclosed by the Director of Human Resources, Ms. Carreon, that three teachers with multiple subject credentials intend to retire; that information was received after March 15, 2012. She also noted that eight teachers job share four teaching positions, and that all eight are tenured teachers. As of March 15, those eight teachers had not requested to job share during the 2012-2013 school year, and that one of the school principals had been informed that a team at his site might not share the position next year. If any of those teaching teams do separate, then the District will be required to re-assign them. Finally, the middle school teaching day, which currently uses seven periods, could potentially return to a six period day, which would mean that less teachers would be required by the District. That issue, subject to negotiation between the District and the teachers’ bargaining unit, had not been resolved by the hearing date.

13. As a result of the foregoing, no junior certificated employee is being retained in a position which a senior employee is certificated and competent to fill.

### **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 8.

2. (A) A District may reduce particular kind of services (PKS) within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a

PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Legal Conclusion is based on Factual Findings 3 through 7 and the foregoing authorities.

3. The District was not required, as Respondents indicated, to consider attrition occurring after March 15. "A school district need not consider positively assured attrition occurring between the date of the [March 15] preliminary notice and the final notice in determining the number of certificated employees to be terminated by reason of a reduction or discontinuation of a particular kind of service." (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, at p. 630 and 635-636.)

4. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, a junior teacher may be given retention priority over one or more senior teachers—may be "skipped" or exempted from lay off in favor of senior employees—if the junior teacher possesses superior skills or capabilities not possessed by more senior colleagues which must be necessary to teach a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

(B) No Respondent established that he or she had the right to bump a junior employee or that he or she should have been skipped, based on the foregoing rules and Factual Findings 9 through 13.

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**ORDER**

The following Respondents may receive final layoff notices: Summer Agnes, Albert Aguilar, Jing Cai, Respect Ly, Deborah Pettus, Bernadette Polich, Conner Ryan, and Terri Totten.

May \_\_, 2012

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings